



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9919-54-OAR]

California State Motor Vehicle Pollution Control Standards; Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model Year Heavy-Duty Engines; Request for Waiver Determination; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Opportunity for Public Hearing and Comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its "Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model Year Heavy-Duty Engines" regulation (HD OBD Requirements) and its "Enforcement of Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model-Year Heavy-Duty Engines" regulation (HD OBD Enforcement Regulation), collectively referred to herein as HD OBD Regulations. EPA previously granted California a waiver for its HD OBD Regulations as amended in 2010. CARB adopted further amendments to the HD OBD Regulations in 2013 ("2013 HD OBD amendments"). By letter dated February 12, 2014, CARB requested that EPA confirm that the 2013 HD OBD amendments are within the scope of the previously granted waiver or, alternatively, that EPA grant a full waiver of preemption for the amendments. This notice announces that EPA has tentatively scheduled a public hearing to consider California's request for waiver of the 2013 HD OBD amendments, and that EPA is additionally now accepting written comment on California's request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on January 14, 2015 at 10 a.m. ET. EPA will hold a hearing only if any party notifies EPA by December 15, 2014 to express interest in presenting the Agency with oral testimony. Parties that wish to present oral testimony at the public hearing should provide written notice to David Read at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at the William Jefferson Clinton Building (North), Room 5530 at 1200 Pennsylvania Ave, NW, Washington, DC 20460. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and will instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until February 16, 2015.

Any person who wishes to know whether a hearing will be held may call David Read at (734) 214-4367 on or after December 17, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2014-0699, by one of the following methods:

- On-Line at <http://www.regulations.gov>: Follow the On-Line Instructions for Submitting Comments.
- Email: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR- 2014-0699, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20460. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

On-Line Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA-HQ-OAR- 2014-0699. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA-HQ-OAR-2014-0699. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's Web site is <http://www.epa.gov/oar/docket.html>. The electronic mail (email) address for the Air and Radiation Docket is: a-and-r-Docket@epa.gov, the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the <http://www.regulations.gov> website, enter EPA-HQ-OAR-2014-0699, in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver requests. Included on that

page are links to prior waiver and authorization *Federal Register* notices. The page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

FOR FURTHER INFORMATION CONTACT: David Read, Attorney, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (734) 214-4367. Fax: (734) 214-4212. Email: read.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. California's HD OBD Regulations

CARB initially adopted the HD OBD Requirements in December 2005. The HD OBD Requirements require manufacturers to install compliant HD OBD systems with diesel and gasoline powered engines used in vehicles having a gross vehicle weight rating greater than 14,000 pounds. HD OBD systems monitor emission-related components and systems for proper operation and for deterioration or malfunctions that cause emissions to exceed specific thresholds.

EPA issued a waiver under section 209(b) of the Clean Air Act (CAA or Act) for the HD OBD Requirements in 2008.¹ In 2010, CARB updated the regulation to align the HD OBD Requirements with OBD regulations applicable to medium-duty vehicles, and adopted the HD OBD Enforcement Regulation. EPA issued California a waiver for the 2010 HD OBD Regulations in December 2012.² CARB subsequently updated the HD OBD Regulations again in 2013. CARB formally adopted the 2013 HD OBD amendments on June 26, 2013, and they became operative under state law on July 31, 2013. The HD OBD Requirements are codified at title 13, California Code of

¹ 73 FR 52042 (September 8, 2008).

² 77 FR 73459 (December 10, 2012).

Regulations, section 1971.1. The HD OBD Enforcement Regulation is codified at title 13, California Code of Regulations, section 1971.5.

The 2013 amendments that are subject of this notice are intended to ease, clarify, or add flexibility to California's previously waived HD OBD requirements. By letter dated February 12, 2014³, CARB submitted to EPA a request for a determination that the 2013 HD OBD amendments are within the scope of the previous HD OBD waiver or, alternatively, that EPA grant California a waiver of preemption for the 2013 amendments to its HD OBD regulations.

II. Clean Air Act Waivers of Preemption

Section 209(a) of the CAA preempts states and local governments from setting emission standards for new motor vehicles and engines. It provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Through operation of section 209(b) of the Act, California is able to seek and receive a waiver of section 209(a)'s preemption. If certain criteria are met, section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a). Section 209(b)(1) only allows a waiver to be granted for any state that had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle

³ CARB, "Request for Waiver Action Pursuant to Clean Air Act Section 209(b) for California's Heavy-Duty Engine On-Board Diagnostic System Requirements (HD OBD) and On-Board Diagnostic System Requirements for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD II)," February 12, 2014.

engines prior to March 30, 1966, if the state determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards (*i.e.*, if such state makes a “protectiveness determination”). Because California was the only state to have adopted standards prior to 1966, it is the only state that is qualified to seek and receive a waiver.⁴ The Administrator must grant⁵ a waiver unless she finds that: (A) California’s above-noted “protectiveness determination” is arbitrary and capricious;⁶ (B) California does not need such state standards to meet compelling and extraordinary conditions;⁷ or (C) California’s standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.⁸ EPA has previously stated that consistency with section 202(a) requires that California’s standards must be technologically feasible within the lead time provided, giving due consideration to costs, and that California and applicable Federal test procedures be consistent.⁹

If California amends regulations that were previously granted a waiver, EPA can confirm that the amended regulations are within the scope of the previously granted waiver. Such within-the-scope amendments are permissible without a full waiver review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public

⁴ See S.Rep. No. 90-403 at 632 (1967).

⁵ EPA’s review of California regulations under section 209 is not a broad review of the reasonableness of the regulations or its compatibility with all other laws. Sections 209(b) and 209(e) of the Clean Air Act limit EPA’s authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California’s requests for waivers and authorizations based on any other criteria. In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA’s determination. See *Motor and Equipment Manufacturers Ass’n v. Nichols*, 142 F.3d 449, 462–63, 466–67 (D.C.Cir.1998), *Motor and Equipment Manufacturers Ass’n v. EPA*, 627 F.2d 1095, 1111, 1114–20 (D.C.Cir. 1979). See also 78 FR 58090, 58120 (September 20, 2013).

⁶ CAA § 209(b)(1)(A).

⁷ CAA § 209(b)(1)(B).

⁸ CAA § 209(b)(1)(C).

⁹ See, e.g., 74 FR 32767 (July 8, 2009); see also *Motor and Equipment Manufacturers Association v. EPA*, 627 F.2d 1095, 1126 (D.C.Cir. 1979).

health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any “new issues” affecting EPA's prior waivers.

III. EPA’s Request for Comments

EPA invites public comment on CARB's request, including but not limited to the following issues.

A. 2013 HD OBD Amendments Within-the-Scope or Full Waiver

First, we request comment on whether CARB’s 2013 HD OBD amendments should be considered under the within-the-scope analysis or whether they should be considered under the full waiver criteria. Specifically, we request comment on whether California’s 2013 HD OBD amendments (1) undermine California’s previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards, (2) affect the consistency of California’s requirements with section 202(a) of the Act, and (3) raise any other “new issue” affecting EPA’s previous waiver or authorization determinations.

B. Whether 2013 HD OBD Amendments Meet the Criteria for New Waiver

Should any party believe that CARB’s 2013 HD OBD amendments do not merit consideration as within-the-scope of the previous waivers, EPA also requests comment on whether those amendments meet the criteria for full waiver. Specifically, we request comment on: (a) whether CARB’s determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling

and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the CAA.

IV. Procedures for Public Participation

If a hearing is held, the Agency will make a record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until February 16, 2015. Upon expiration of the comment period, EPA will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that the Agency deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR- 2014-0699.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" ("CBI"). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of

confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: November 12, 2014.

Christopher Grundle, Director,
Office of Transportation and Air Quality,
Office of Air and Radiation.

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